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4 UNITED STATES DISTRICT COURT
5 FOR THE NORTHERN DISTRICT OF CALIFORNIA
6 OAKLAND DIVISION

7 KAMLESH BANGA,
8 Plaintiff,

9 vs.

10 FIRST USA, NA and CHASE BANK USA,
11 Defendants.
12

Case No: C 10-0975 SBA

Related to: C 08-4147 SBA

ORDER

Docket 77.

13
14 On December 8, 2010, Magistrate Judge Laurel Beeler issued a Report and
15 Recommendation on Defendant Chase Bank USA, N.A.'s ("Defendant") motion under
16 Federal Rule of Civil Procedure 41(d) for an award of costs in a related action, Banga v.
17 Experian Information Systems and Chase Bank, No. C 08-4147 SBA ("Banga I"). Dkt. 59.
18 Magistrate Judge Beeler recommended awarding costs in the amount of \$1,247.84, which
19 consisted of \$1067.39 in "Federal Express/Filing" costs, and \$180.45 in copying costs.
20 Dkt. 59. She further recommended staying the action until Plaintiff remitted those costs to
21 Defendant. Id. Plaintiff filed objections to the Report and Recommendation. Dkt. 60. On
22 March 16, 2011, this Court issued an Order overruling Plaintiff's objections and accepting
23 the recommendations of Magistrate Judge Beeler. Dkt. 64. In this Order, the Court
24 specifically warned Plaintiff that her action would be dismissed under Federal Rule of Civil
25 Procedure 41(b) if she did not tender payment within thirty days. Id.

26 On March 30, 2011, Plaintiff filed a Motion for Reconsideration of Order Accepting
27 Report and Recommendation of Magistrate Judge. Dkt. 65. The sole basis for her motion
28 was that the Court erred in including the \$670.05 charge for the subpoena in its cost award.

1 Id. Plaintiff claimed that "she was not aware . . . that Defendant had represented to the
2 Court that it had paid to the process server in serving a subpoena as it was not mentioned in
3 said Recommendation issued on December 10, 2010." Id. The actual cost of serving the
4 deposition subpoena--she claimed--was only \$59.00. Id.

5 In an Order dated March 30, 2012, this Court denied Plaintiff's motion for
6 reconsideration, directed her to pay Defendant \$1,247.84 in costs within twenty-one (21)
7 days, and stayed the action in the interim. Dkt. 76. The Court specifically warned Plaintiff
8 that "failure to pay within the deadline indicated may result in dismissal of this action,
9 without further notice, under Federal Rule of Civil Procedure 41(b) for lack of
10 prosecution." Id.

11 On May 1, 2012, Plaintiff filed a motion for extension of time to pay costs,
12 requesting an extension of 180 days because she is disabled and unable to work, and her
13 monthly retirement check in the amount of \$1,184.32 is her only income. Dkt. 77.
14 According to Plaintiff, she sent a check in the amount of \$150.00 to Defendant on April 27,
15 2012. Dkt. 78. On May 3, 2012, Defendant filed an opposition to Plaintiff's motion,
16 arguing that Plaintiff's "untimely and defective motion for extension of time should be
17 denied," and that the Court should dismiss this action under Rule 41(b) for failure to
18 prosecute and failure to comply with the Court's March 30, 2012 order. Dkt. 80.

19 The Court finds that Plaintiff has failed to demonstrate that a 180-day extension of
20 time to pay costs is warranted. Plaintiff has been on notice of her obligation to pay
21 Defendant costs since March 16, 2011, the date this Court issued its Order accepting
22 Magistrate Judge Beeler's Report and Recommendation on Defendant's motion under Rule
23 41(d) for an award of costs. Dkt. 64. Over a year has elapsed since the issuance of this
24 Order. As such, Plaintiff has been given ample time to comply with the Order. While the
25 Court does not countenance Plaintiff's disobedience of its Order or her failure to prosecute
26 this case, which has unreasonably delayed resolution of this action and caused the Court to
27 expend its scarce resources devoted to matters other than the merits of this action, the Court
28 declines to dismiss this action as Defendant requests. In light of this Court's obligation to

1 consider less drastic alternatives before dismissing an action under Rule 41(b) for failure to
2 prosecute and/or failure to comply with a court order, see Pagtalunan v. Galaza, 291 F.3d
3 639, 642 (9th Cir. 2002), the Court will grant Plaintiff a twenty-one (21) day extension of
4 time to comply with the Court's Order. The Court warns Plaintiff that no further extensions
5 of time will be granted. Accordingly,

6 IT IS HEREBY ORDERED THAT:

7 1. Within twenty-one (21) days from the date this Order is filed, Plaintiff shall
8 pay Defendant \$1,247.84 in costs and shall file a certificate with this Court confirming
9 payment; this action is stayed in the interim. Plaintiff is warned that the failure to timely
10 pay Defendant will result in dismissal of this action under Rule 41(b) for lack of
11 prosecution and failure to comply with a Court Order. In the event Plaintiff does not
12 comply with this Order, Defendant shall notify the Court.

13 2. This Order terminates Docket 77.

14 IT IS SO ORDERED.

15 Dated: 5/17/12

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17 SAUNDRA BROWN ARMSTRONG
18 United States District Judge
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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 BANGA et al,

5 Plaintiff,

6 v.

7 FIRST USA, N.A. ET AL et al,

8 Defendant.
9 _____/

10 Case Number: CV10-00975 SBA

11 **CERTIFICATE OF SERVICE**

12
13 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
14 Court, Northern District of California.

15 That on May 17, 2012, I SERVED a true and correct copy(ies) of the attached, by placing said
16 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
17 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
18 located in the Clerk's office.

19
20 Kamlesh Banga
21 P.O. Box 6025
22 Vallejo, CA 94591

23 Dated: May 17, 2012

24 Richard W. Wieking, Clerk
25 By: Lisa Clark, Deputy Clerk
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